

## **IV. E. Substantive vs Administrative Requirements**

**Notes:**

## **CERCLA Section 121(e)**

- “No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite...selected and carried out in compliance with this section.”
- Exemption applies to all administrative requirements, whether or not they are actually styled as “permits”

*Substantive vs Administrative*

**Notes:**

## Why Not Comply with Administrative Requirements?

- Redundant
- Too slow
- Jurisdictional overlap

*Substantive vs Administrative*

### Notes:

To ensure that CERCLA response actions proceed as rapidly as possible, EPA has affirmed in the final NCP that **on-site** response actions need only comply with substantive requirements (55 *FR* 8756, March 8, 1990). The CERCLA program has its own set of administrative requirements, and the application of additional or conflicting administrative requirements could result in delay or confusion.

*Redundant* - CERCLA has its own administrative process and requirements for state and community involvement

*Too slow* - the exemption allows the response action to proceed in an expeditious and timely manner

*Jurisdictional overlap* - CERCLA program impacts more than one medium, thus overlapping other regulatory and statutory programs

## **Substantive vs Administrative Requirements**

- Substantive requirements pertain directly to actions or conditions in environment that directly influence activity at site
- Administrative requirements pertain to administrative methods & procedures

*Substantive vs Administrative*

### **Notes:**

Examples of substantive requirements:

- Incinerator standards
- Emissions limits (e.g., radionuclide NESHAP)
- Design standards (e.g., RCRA minimum technology requirements for double liners and leachate collection systems)
- Monitoring requirements (as distinguished from “reporting” requirements)

Administrative requirements facilitate the implementation of the substantive requirements of a statute or regulation.

Examples of administrative requirements:

- Consultations with administrative bodies
- Issuance of permits
- Documentation
- Reporting
- Administrative reviews

## **Determining Whether a Requirement Is Substantive or Administrative**

Consider:

- Basic purpose of requirement
- Potential danger to human health & environment if requirement is not met
- Existence of other requirements at site that would provide functionally equivalent compliance
- Classification of similar or identical requirements as substantive or administrative in other CERCLA situations

*Substantive vs Administrative*

### **Notes:**

Usually it is clear whether a requirement is substantive or administrative, however in some situations it may be ambiguous.